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OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MAY 23 1990

Lynn L. Bergeson  
Fox, Weinberg & Bennett  
750 17th Street, NW  
Suite 1100  
Washington, DC 20006

Dear Ms. Bergeson:

This letter is in response to your letter of November 1, 1989, in which you describe a hypothetical situation involving a battery manufacturer, ABC, Inc. You are asking for a determination of the regulatory status of the nickel/cadmium batteries that are returned to ABC Inc., the manufacturer, and subsequently, redistributed or exported. You have stated that the batteries exhibit the characteristic of EP Toxicity for cadmium.

Spent nickel/cadmium batteries returned to the manufacturer for regeneration are excluded from regulation under 40 CFR Parts 262 through Parts 266 or Parts 268, 27 or 124, and are not subject to the notification requirements of Section 3010 of RCRA (40 CFR 261.6(a)(3)(ii)). The facts you have provided indicate that ABC, Inc. does not regenerate the batteries returned; but rather, drains the batteries of fluid and then exports them. Draining the batteries does not constitute regeneration. Therefore, ABC's customers are subject to the regulations of Parts 262 through 266, 268, 270 or 124, including the manifesting requirements, when returning spent nickel/cadmium batteries to ABC, Inc.

ABC's customers must determine if their batteries are spent before sending them off-site. A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing (40 CFR 261.1(c)(1)). In the case of used batteries, if the customer has used the battery and can no longer use it for the purpose for which it was produced, it is considered spent. The battery does not have to be contaminated to be considered spent.

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